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## *A Discourse concerning the Signification of Allegiance, as it is to be understood in the New Oath of Allegiance.*

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*Qui Perjuri immunis esse cupit, &c. He, who desires to preserve himself from Perjury, ought diligently to weigh every Word of the Oath which he is to take, and the Sense and Force of them; that if it ought not to be kept, it may not be taken; if it be lawful to be taken, it may be kept without fraud and dissimulation. Sand. De Juram. Oblig. Prel. 6. Sect. 7.*

**T**H E Words of the Oath are these; *I A. B. do sincerely promise, and swear, that I will be faithful, and bear true Allegiance to their Majesties, King William and Queen Mary, So help me God.*

In this compendious Form of Swearing, it is said there is great Ambiguity, which lies principally in the doubtful signification of the Words [*Faithful, and True Allegiance;*] which may import either,

1. That kind of Fidelity, and Obedience which Captives may promise to their Conquerors, or oppressed Subjects to Usurpers; and oblige them only to a quiet, and peaceable submission, while they are under their Power, and does not debar them from assisting their Lawful Sovereign in the Recovery of his Crown:  
or,

2. All that Fidelity and Allegiance, which was formerly sworn to the Kings of England, whereby their Subjects were obliged to defend their Crown, and Dignity against all Persons whatsoever; not reserving any Branch of their Allegiance, as Due to any other.

It is upon this Distinction, that two different Interpretations of the Oath are grounded, and the highest construction is this; *I A. B. am sincerely resolv'd to adhere faithfully to King William and Queen Mary, to perform all the Duties of Allegiance, and Subjection unto them alone, and to defend their Crown and Dignity with my Life and Fortune to the uttermost of my power against all Persons whatsoever.*

And the lowest construction is to this effect; Whereas *W.* and *M.* are actually in possession of the Regal Power, so long, as they continue in the full possession of

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it, I do swear, that I will pay them that Obedience, and Submission, which may be lawfully paid to an Actual Sovereign, not engaging hereby to uphold them in the possession of the Throne against the *K. de Jure*, nor debarring my self from exerting my sworn Allegiance to him upon any emergent opportunity for the recovery of his Right.

I am not certain that this last Clause of assisting the *K. de Jure*, is the Sense of them, who have taken the Oath with a Declaration of living peaceably under the present Government; yet there is this reason to believe that it is, because (if any thing can be infer'd from an Explanatory Declaration, more ambiguous, and obscure, than the Oath explain'd) we may reasonably infer from thence, That the Declarers thought the Oath in the higher Sense unlawful, because directly contradictory to their former Obligations to *K. J.* But if those are still in force, then they are still obliged to an actual assistance of him; and then their Declaration must be understood in such a sense, as shall not exclude it. In short, if their former Oath be obligatory, then they are obliged to assist *K. J.* If it is not, then the present Possessors are undoubtedly our Lawful Sovereigns, and we are consequently obliged to pray that they may have Victory over all their Enemies; and if this be our duty, it is a manifest Sin not to contribute our Actual Assistance in our respective Stations for the obtaining of it. Wherefore chuse they which they will, either that their former Oaths are obligatory, or not; the One, or the Other of the Kings they are bound to assist, and therefore they cannot be presum'd to bind themselves by Oath to a sinful Neutrality; which is plainly contradictory to their former Oath, and if that be extinguish'd, to their manifest Duty to the present Possessors.

But nevertheless, because what seems so improbable, may yet be possibly true, that they intended to bind themselves only to an exact Neutrality; it shall be

shewn in the ensuing Discourse, That the true Notion of Allegiance is absolutely inconsistent with it.

To return therefore to the two former Interpretations of the Oath, it is manifest, that they are contradictory to each other. By the former we are obliged to pay all our Allegiance to *W.* and *M.* By the latter, not All, but an Allegiance qualified, and limited: in the one, to uphold them to the uttermost of our power in their Crown and Dignity; in the other, we profess we will not be obliged to do it: In the one, we engage to defend them against all Persons whatsoever, and in the other, a Power is reserv'd to assist *K. J.* against them. And if there be any, that take the Oath in a middle sense of Neutrality, it is evident from the very Term of Neutrality, that it is plainly contradictory to the first construction also.

These several Interpretations therefore being contradictory to each other, it is certain the Swearer cannot be obliged unto more than one: nor is it to be imagin'd, that the Imposors intended either to oblige us to contradictory, and impossible Duties; or to leave us at liberty to chuse in which of those contradictory senses we will be obliged. For this Oath is exacted by a Law; and a Law is nothing else but the declared will of the Legislator. Now if a Law should be so fram'd on purpose by the Legislator, as to be fairly capable of two contradictory constructions, and to leave the Subject to his choice in which he will obey it; it is manifestly no Law at all, because it does not contain the determinate declar'd Will of the Legislator; and the Subject being allowed to take either part of the Contradiction, is not determin'd, as by a Law he always is, to any Act of Obedience. And if this be true in all Laws, much more will it hold in those by which Promissory Oaths are established: for a Promise equally capable of contradictory senses, is indeed no Promise: And it is not to be supposed, that our Legislators intend-

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ed to frame a Promissory Oath, that should contain no Promise at all; and to make a Law for the most solemn mockery of God, that can be imagined.

It is therefore presum'd, That the Imposers of this Oath intended to oblige us to one determinate meaning of it; and that those Words, by which they chose to declare their Intention, cannot be reasonably so interpreted, as to declare the quite contrary also: and then it must be granted, that one of these Constructions is both intended, and sufficiently expressed in the Oath; and that no doubt is the sense, in which we are obliged both to take, and keep it.

We are therefore now to enquire whether of these Constructions is the intended, and declar'd meaning of the Imposers. And here there appears at first view an invincible prejudice against the lower Construction of the Oath, viz. that this Oath being undeniably intended for the security of the present Possessors against the dispossession; if that Construction be admitted, though it be never so well observ'd, it can be no security at all unto them. If it be not intended for their security, it is a vain, and insignificant Oath: but if it be intended for any thing, it is certainly designed to secure them from the greatest, I may say, the only, danger they are in, and that is, from the attempts of K. J. But after all, if we affix this Sense upon the Oath, that great, and wise security amounts only to this, *[That we will submit to the Power of the present Possessors, as long as there is no help, but a Halter for it; but as soon as ever it becomes safe, and prudent to attempt it, we will then with all our might endeavour to dethrone them, and restore the lawful King to his Crown, and Dignity; in short, that we will not attempt to destroy K. W. till we have probable hopes to effect it.]*

And can it be imagin'd that so great and wise a Body, as is the Parliament of England, should after great labour, and struggling in its Birth, produce a thing so

ludicrous? Will K. W? Will any K. upon Earth be content with such Security as this? Will he not rather look upon it as an open Declaration of Rebellion against him? Is this to swear True Faith and Allegiance to him? Namely, to submit, till we can prudently rebel against him? Was there ever any such Oath exacted from Subjects since the beginning of Government? In short, if this be the Sense of the Oath, as none but Mad men would have enacted it, so it is fit to be propos'd to Mad-men only to take it: for it is certain none else will contrive, or execute any attempts against him without hopes of success. And yet this must be the Sense of those, who take it with a reserve of their old Allegiance to K. J. for by that Allegiance they are obliged to assist him in the recovery of his Crown, to the utmost of their power, whenever their assistance may be useful and serviceable to his Cause. But to swear Allegiance in this sense, is plainly to swear nothing at all; 'tis only the Phantom of an Allegiance, and will not only deceive, but destroy them that were intended to be secured by it. Here therefore I may appeal to the common sense of all men, whether that can be presum'd to be the meaning of the Oath which does directly contradict the whole End and Intention of it; and whether it be not a thing incredible that the King, Lords, and Commons should enact an Oath to secure the present Government, and in the same Oath allow the Takers leave to attempt the destruction of it; and whether lastly, I had not reason to affirm, that this is an invincible prejudice against that Construction, and may not now have leave to add, that it is a plain demonstration against it.

And the same reasoning will in some measure hold against a Neutrality also; because that also does defeat the Provision intended in this Oath for the security of K. W. The only difference is, That the former Construction does permit the Swearers to be still Enemies to the Government: But this leaves it with-

out any Friends to support it. The one does in effect arm the Subjects to destroy it; and the other leaves it naked and defenceless to be destroyed by them. Both are highly pernicious to the present Governors, and absolutely inconsistent with the prime and immediate Intention of the Oath to secure them. Perhaps it will be said, that a peaceable Neutrality, were it sworn and observ'd by all the Subjects, would infallibly secure the Possessors against all Attempts to dethrone them; and that however if such Attempts be made, since the greatest part of the Subjects do think themselves obliged by the Oath to an Active Assistance, the Possessors will be effectually secured by it. But

1. The Imposers knew well enough, that there were great numbers, that would neither swear, nor observe a Neutrality; but would actually assist the dispossessed K. against them; and that therefore in such a dangerous Conjunction, a bare Neutrality of all the Subjects could be no tolerable Security against them. And

2. If they intended to oblige the Subject only to an exact Neutrality, it was a gross Prevarication so to frame the Oath on purpose, that in the Opinion of most Men it might import an Obligation contradictory to it. And besides, if that alone were the precise Intention of the Imposers, then the Government will be secured, not by the Oath it self, but by a false Construction of it. Wherefore this single Consideration of the chief End and Intention of the Oath does clearly evince the first and highest Construction to be the true meaning of it: And that it is so, I will further endeavour to prove by all the Medium's, by which the meaning of an Oath is capable of being proved, and those are only these two; the Words which the Imposers have made choice of to declare their meaning; and their intention otherwise sufficiently expressed by Circumstances, and other Actions, which may serve as a Comment upon the Oath, and may ascertain us of the meaning of it. And

1. I consider the signification of the Words [*faithful, and true Allegiance,*] which contain all the promissory part of the Oath, and have occasioned all the different Constructions of it.

It is certain, that Words generally speaking have their signification only from the Institution of Men; and those that are vulgarly used, and understood in any Language, from the common consent of the People of that Language; and those that are understood only by a few, such as are called *Terms of Art*, from the Professors of the several Arts and Sciences. The Words [*faithful and true Allegiance*] may be consider'd in both respects, as they are vulgarly taken, and understood by the generality of the People of this Nation; and as they are Law-terms, which are to be understood according to the Sense of Lawyers. And first I will consider what is the signification of those Words according to the Laws and Lawyers.

1. I observe, that the Lord Coke in *Calvin's Case* does affirm, that Faith and Allegiance have only one signification; and there he produces several Instances to shew, that *Esse ad Fidem Regis* signifies only to be in the Ligeance of the King: accordingly the same Oaths are sometimes called Oaths of Fidelity, and sometimes Oaths of Allegiance without any distinction. And Sir *Henry Spelman* in his Glossary defines Fidelity to be [*Fidei, obsequii, & servitii ligamen*] which is neither more nor less than Allegiance. So that even in this short Oath there is still a Word too much, since Faith and Allegiance do signify the same thing, and express the same Duties of Subjection.

2. The Subjects of *England* may in two respects be stiled *Fideles Regis*. First as they are Members of the Body Politick, and are therefore obliged to pay the K. *Fideles*. *Spelman v. r.* that Fidelity and Subjection which is due to the Supreme Head and Governor of it, Secondly, As they hold their Lands in Fee of the K. and so are obliged to pay Fealty and Allegiance to him. A Fee is thus defin'd by the *Feudists*, *That it is a free*



*Feudum est benevola, & libera rei immobilis, & equipollentis concessio, cum translatione utilitatis Domini, proprietate retenta sub exhibitione servitiorum honestorum.* Feud. Declaration ante lib. Feud.

free and benevolent Grant of a thing immoveable, or something equipollent with a conveyance of the Right to all the Profits of it, the Propriety being still reserved to the Lord; and the Grant made upon Condition of Fidelity, and the performance of honest Services.] So that in this Feodal Contract it being expressly provided, that even the *Utile Dominium* should revert unto the Lord upon breach of Fealty; the Vassal was hereby obliged in point of Interest, as well as Gratitude to an exact performance of it: and consequently all the Subjects of England being Vassals to the K. are besides the common Duty of Subjects under the same Additional Obligations of Fidelity to him.

3. From this Tenure of Lands in Fee, they who held them, were sometimes called *Fideles*, and sometimes *Ligii a Ligando*; and the Bond or Obligation they were under *Fidelitas*, and *Ligeantia*; and the Oaths they took to perform it, Oaths of Fealty and Allegiance. For anciently Ligeance was not appropriated to the Sovereign only, but it denoted in general the Obligation of a Vassal to any Lord whatsoever. Thus *Hotoman* in his Feudal Dictionary tells us, That *Liege-man* was but another word for a Vassal: and in his Disposition he spends a whole Chapter to prove it. Thus *Du Fresne* distinguishes between an absolute Ligeance due to a Supreme Lord, and a Ligeance paid to an Inferior, with exception of the former. So also *Bracton*, *Glanvil*, and *Fleta* do speak of Ligeance as due to any Capital Lord besides the King. And *Spelman* in his Exposition of the word shews by several Instances, That private Persons had their Liegemen also. But tho' Ligeance had anciently so large a Signification; yet

4. It was at length confin'd to denote only the Obligation of a Vassal to the Sovereign Lord of the Fee. Hence that Distinction in the Feudists *inter Feudum ligium, & non ligium*; which is thus explained by *Dr. Comel.* in his Institution; viz. [That the former is properly so called, when an Oath of Fidelity is taken without exception of any one; and the later, when

it is sworn with exception of another Fealty.] The one is due only to the K. and the other even to common Persons.] In short, the one was held immediately of the Crown, and the other mediately under an inferior Lord; and therefore it was but equitable, that in the Oath of Fealty to him, exception should be made of the King, who was the Original Proprietor, and Sovereign Lord of the Fee.

5. Two considerable Prerogatives may be observed from the Lawyers, which were peculiar to the Sovereign Lord alone. First, That whereas the Inferiour Lord had only *propter rem* a right to the Fealty of his Vassal, from which he might free himself by surrendering his Estate; the Sovereign Lord had a Right to it *propter personam* also; and consequently, tho his Liegeman did part with his Estate, yet Allegiance was still due by virtue of that inalienable Jurisdiction, which the Sovereign had over his Person. Secondly, Whereas between an Inferior Lord and his Vassal, there was such a strict reciprocal Obligation to protection on the one part, and Fidelity on the other, that (as the Tenant lost his Fee upon breach of Fidelity; so likewise) the Inferior Lord, if he refused protection to his Vassal, or committed any enormous Offence against him, did forfeit [to the Sovereign Lord] all his right to the Fee. Yet, as *Molinæus* affirms [this Penal Forfeiture of Dominion extended only to Inferior Lords; the Sovereign being exempted from it.] For tho the Liege-Sovereign was bound to protect his Liegemen; yet there was no provision that he should forfeit his right to their Fealty, if he did not perform his Obligations to them. Indeed there can be nothing more irrational, than to imagine such a Provision; when Fealties were Originally owing only to the Munificence of Kings, and even before that new Obligation of Fealty, they had an antecedent right to the Fidelity of their Subjects; when the Kings Lands (as the Lawyers speak) were held under God alone, and therefore could

*Pend. l. tit 26:*

*Car. Mol. tit. 1. Glo. 4. r. 17*

*Inst. jur. Ang. l. 2. tit. 2.*

not be forfeitable to any; when the K. himself could not be responsible for any Injury for want of a Superior Jurisdiction;

*Bracton. l. 1 c. 8. Si autem a rege petatur, locus est supplicationi, quod factum suum corrigat, & emendet: quod quidem si non fecerit, satis sufficit ei ad penam, quod Dominum expellet ultorem.*

[and if any were done to the Subject, there was no other remedy, but only humble Petition, that the K. would correct and amend his Fact; which if he refused to do, it was once thought a sufficient Punishment for him, that God was to be his Avenger.] This I have here observ'd, because the Assertors of the Republic

lican Doctrines have maintained, that Kings may forfeit their Crowns, not only from the nature of that Imaginary Contract, which they suppose was made at the first Origine of the Government; but also from that Contract which was made between the Sovereign, and his Vassals, and which they suppose to be equally on both sides Conditionate.

6. Though these Feudal Laws are now in a great measure antiquated; yet the Fealty by which a Vassal is bound to his Lord is still in force. Sir Henry Spelman says, [That Fealty in England is inseparable from all Tenures, and though it be now but seldom exacted, yet it can by no means be releas'd without destruction of the Tenure; so that the taking of the Oath seems rather to be remitted, than the Obligation it self to be dissolv'd.] And much more does the Obligation of Fealty to the K. continue still in force upon all the Subjects by virtue of their Tenures from him. The same great Antiquary affirms, That the Feudal Law was first brought into England by William the Conqueror, [Qui lege eâ à Normannia traductâ Angliam totam suis divisit militibus.] And this universal distribution of the English Lands among his Soldiers, and Institution of Fee service is attested by † *Mat. Paris*, and by Mr. † *Cambden* also.

And hence it is, that all the Lands of England being originally derived from the Crown, are still held of the King in nature of a Fee, which implies Fealty to him. And this is a true, and easie account of those Assertions of the Lawyers:

[That the King is the Sovereign Lord, or Lord Paramount, either mediate or immediate of every parcel of Land within the Realm; and that the Subjects have not a direct and plenary Dominion, but only a Fiduciary, and conditionate property in their Estates,] which are still forfeitable by the common Law, and upon breach of Fealty do revert to the Original Donor. Which Law, according to the nature of the Crime, does also vary the forfeiture: as in case of Felony the K. hath a Year, a Day, and the Waste; after which it passeth down to the Heir: But in case of Treason, which is the highest breach of Fealty, after Legal Conviction of the Traytor, the Fee is for ever forfeited, and all his Lands and Tenements are absolutely at the King's disposal. And though a Statute was made 25 *Ed. III.* to determine what was precisely Treason: yet this was only declarative of what was truly Treason by the Feudal Laws, which were then a part of the Common Law of England. And hence it appears, how necessary it is for the understanding of the true meaning of Faith and Allegiance, to enquire into the nature of Fealty; whence the Subjects are called *Fideles* & *Ligi Regis*; and from which all our Oaths of Fidelity, and Allegiance derive their Birth, and Original.

7. As the word Allegiance was appropriated to express the Obligation of a Liege Vassal to his Sovereign: so was it also at length enlarged to comprehend all the duties of Fidelity and Subjection, which (not only they, who hold Lands in Fee, but also) every individual Sub-

*Coke 1. Inst. l. 2. c. 1. Cowell. Inst. Jur. l. 2. tit. 2.*

*In v. Fidelitas.*

† *Historia major, p. 5. 6. \*Cambden. Britannia. p. 109. edit.*

*Lond. 1607. Victor Gulielmus, in victoris quasi tropæum antiquatis maximam partem Anglorum Legibus Normanniæ consuetudines induxit, causisq; Gallicè disceptari jussit, exclusis hereditate acitâ Anglis, agros & prædia militibus suis assignavit; ita tamen, ut Dominium directum sibi reservaret, obsequiumque clientelari jure sibi & successoribus devinceret. i.e. ut omnes in feudo sive fide venerent, & nulli præter Regem essent veri Domini; sed totius fiduciarii Domini, & possessores.*

Descrip.  
Jur. tem-  
por. juxta  
conjuet.  
Feudales  
pars 1. § 2.

ject of this Realm was bound to pay unto the King. Thus *Zouch* out of *Duarenus*, [ *The Fidelity, which is due to the Sovereign, is by the Feudists called Ligeance, and as many as live within his Dominions are stiled Liege-men; who are bound to the Sovereign not only by reason of their Estates, but also in respect of their Persons, and his Protection of them.* ] The reason then why all the Subjects of this Realm are called the King's Liege-men is, because their persons being under his Jurisdiction, and Protection, they are therefore bound to pay due Fealty and Allegiance to him.

Calvin's  
Case.

This universal Allegiance of all the natural Subjects of this Realm, is by the Lord *Coke* distinguished. 1. 'Into natural Ligeance; which is so called, because it is originally due by Nature, and Birthright. And, 2. Legal Ligeance; so called, because the Municipal Laws of this Realm prescribe the Form and Order of it: and this, says he, is that, which the Law requires upon Oath at the *Leet*. This Oath of Allegiance in his Institutes he says expressly, is the same with *Homagium Ligeum*, which he thus defines in *Calvin's Case*, [ *Quod soli Regi debetur sine servitio;* ] and opposes it to *Homagium Feudale*, which hath it's original by Tenure. And to this Sir *Henry Spelman* seems to agree; who tells us, *That Liege, or Sovereign Homage is due only to the King in right of Sovereignty.* And they both differ herein, from the Feudists; who define Homage to be *Sponsionem fidelitatis propter Tenuram*; and from our ancient Lawyers, who do intimate, *that Liege Homage was made unto private Persons also.*

In v. Ho-  
magium.

Mol. ibid.  
Glo. 3.

8. The word Ligeance is yet further in our Laws, and Lawyers enlarged to denote the duty, not of natural Subjects only, but also of Denisons, and Aliens. Thus we are informed likewise in *Calvin's Case*, that besides natural Ligeance there is also *Ligeantia acquisita*, which is due by acquisition, or Denization; and *Ligeantia Localis*, and that is, when an Alien, who is in amity, com-

eth into *England*, because he is then within the King's Protection, he does therefore owe a Local Allegiance to him.

9. Lastly, Allegiance is sometimes taken in a signification yet more general, and extensive to express the mutual, and reciprocal Obligation between the Liege Sovereign and his Subjects; whereby the Sovereign is bound to the Protection, and just Government of his Subjects; and they again to pay due Fidelity, and Subjection to their Sovereign. And thus it is defined in general by *Skene* in his Book *De Expositione Verborum*, who is herein followed by the Lord *Coke*, and Sir *Henry Spelman* also.

Calvin's  
Case.  
In v. Li-  
geantia.

It appears then in how great a Latitude the word Allegiance is taken, and how variously it has been applied to express different Obligations to different Persons. The various significations of it (as far as I can observe) may be reduced to these six. First, It anciently denoted the Service, and Fidelity, that any Vassal owed to the Lord of the Fee. Secondly, It was confin'd to express the duty of a Liege Vassal to the Sovereign Lord. Thirdly, It was then enlarged to comprehend the whole duty of every natural Subject to his natural Sovereign. Fourthly, It sometimes signifies that Oath of Fidelity, which the Law requires of every Subject, and is therefore call'd *Legal Ligeance*. Fifthly, It is said to express the Obligation of a Foreigner, as of a Denison; and of an Alien, while he is in the Realm. And lastly, It is applied to express the reciprocal Obligations, that are between a Liege Sovereign, and his Subjects.

As for this last signification of Allegiance, we have already consider'd it, where we discours'd of the Prerogatives of the Sovereign Lords: for here we are to consider the duty of Allegiance, as it relates to Subjects only; and there would be nothing more absurd, than to say, That when Subjects swear Allegiance to their King, they do swear that

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that he also shall discharge the Obligations of a Liege Sovereign toward, them.

So likewise when Allegiance is applied to Aliens, the very nature of the thing does shew, that it must signify only those branches of the duty of Allegiance, which an Alien is bound to while he is in *England*, viz. conformity to the Laws, and an obligation not to attempt any thing against the King, while he is within his Protection. So also when it is applied to a Denison, who is made free of the Kingdom, but not entitled to all the Liberties, and Priviledges of a Natural Subject, it can then signify only those duties of Allegiance, which a Denison is obliged to, whatsoever they are. For as the Duties of Allegiance are diversified by the different qualities of Natural Subjects; and a Clerk, a Soldier, and Artificer are not bound to the same particular acts of Allegiance: so likewise the different degrees of Allegiance must be determin'd by the different degrees of subjection: and therefore a Natural Subject, who enjoys all the Liberties, and Priviledges of the Kingdom, and owes the highest degree of subjection, must be in reason obliged to a higher degree of Allegiance than a Denison, who, though he be to some intents incorporated into this Kingdom, is yet the natural Subject of another Sovereign: and he again is obliged to more than an Alien, who is only a Subject in *Transitu*, and enjoys nothing but Protection from Injury. But we have now nothing to do with Allegiance, as it is applied to Foreigners. Allegiance in the Oath before us is required, and imposed upon all the Natural Subjects of this Realm; and therefore it must be that, which is due from Natural Subjects, and not such as is due from Foreigners. We are bound to honour God, and the King, and Subordinate Magistrates, our Spiritual Rulers, our Parents, all our Superiors, and in some sense all our Inferiors. Honour is due to all these, but in different kinds, and degrees according to the nature of the Duty,

as it is applied by different Persons to different Objects. Now it would be a gross absurdity, when we are commanded to honour God, or the King, to interpret it of such a degree of honour, as is due to a Parish Priest, a Constable, or a Beggar, because honour is due respectively to every one of these. So it is equally absurd, when Allegiance is universally required of all the Natural Subjects, because the word is sometimes taken in a lower sense, when it is referr'd to Aliens, to argue from thence, that the Law, which requires Allegiance from all Natural Subjects, requires no more, than an Alien is bound to. To argue thus, is at once to do violence to common sense, and Language; for as no one that understands either, can imagine that the Precept which enjoyns Sons to honour their Parents, requires less than filial Duty, and Obedience, though the word honour often signifies less: so neither can it be reasonably imagin'd, that Allegiance in the Oath imposed does signify less, than all that Fidelity, and Obedience, which a Natural Subject owes to his Natural Sovereign, though the word, as it relates to Aliens, may sometimes signify less.

But however, if Allegiance must needs be understood in that sense; as if by the force of that word we were obliged to no more, than what even an Alien may swear to perform: yet it is to be consider'd, that even the Local Allegiance, which an Alien owes to the King in whose Dominions he is, does at the least oblige him not to attempt against his Crown and Dignity, as long as he resides in those Dominions. Whereas he, who conceives his Oath to K. 3. to be still Obligatory, must consequently think himself obliged to attempt the dethroning of the K. *de facto*; and cannot therefore swear even a Local Allegiance to him.

It remains then to consider the other Applications of the word Allegiance, which are all reducible to these two; that Allegiance, which was requir'd of those



those who held Lands in Fee ; and that which is required of all the Subjects in general, which is also distinguished into Legal, and Natural Allegiance. And these several kinds of Allegiance are not thus distinguished, because they import different Duties ; but in respect of the different Grounds, from whence their Obligation is derived. For I shall produce undeniable proofs, that they do all concur in obliging us to the same Duties : and that, which I undertake to evince, is this ; That Allegiance in those several acceptations does import, not only that Obedience, and Submission, which may be lawfully paid to an Usurper, with a Reservation of Fidelity to the lawful King ; which is the sense of the lowest : nor yet a meer peaceable Neutrality, which may make a middle construction : but that it always imports an Obligation to defend our Sovereign's Crown and Dignity, to the utmost of our power, against all Persons whatsoever, without any exception ; and never to give any assistance, or support to any of his Enemies against him ; as the first, and highest Construction of the Oath explains it. And first, for the better understanding the Obligation of Feudal Allegiance ; it is requisite to enquire into that Fidelity, which every Vassal was bound to pay unto his Lord. And there can be nothing more evident, than that it obliged him not only to abstinence from all Injuries, but also to an active, and vigorous assistance of him. This is abundantly evident from the Feudal Books annexed to the body of the Civil Law : out of which I shall produce some demonstrative proofs to evince it.

At the Investiture of a Fee, the Vassal was to swear Fidelity in this form. [*Ego Titius juro super hac sancta Dei Evangelia quod ab hac hora in antea usque ad ultimum diem vite ero fidelis tibi Caro Domino meo contra omnem hominem excepto Imperatore, vel Rege.*] And there follows in the Law an Explanation of the Oath to this Effect. [*I swear, that I will never be in Counsel, or aid against the*

*Life, Person, or Honour of you my Lord : and if any such design shall come to my knowledge, I will discover it to you as soon, as may be, and be ready to assist you to the utmost of my power : and if you shall chance to be unjustly deprived of any thing I will aid you to recover it : and if you make a just Offensive War upon any One, I will be ready upon due Summons with all my might to assist you.] These were the particularities, which by the Feudal Law were contain'd in the Oath of Fealty*

In another place it is expressly provided, that the Vassal should give his Counsel and assistance to his Lord for the preservation of his Life, and Honour, his Fortresses, and Possessions ; because, says that Law, [*It is not sufficient to abstain from Injuries, unless actual good Service were performed also.*

*Ibid. tit. 6.*

Another proof hereof may be deduced from the Obligation of a Vassal to assist his Lord in his Wars. Hotoman observes, That in the Feudal Laws Vassals are commonly called Soldiers, and that anciently none but such were capable of Lands in Fee, because the greatest part of their Feudal Services were purely Military. Accordingly it is declared in these Laws ; [*\* That the Vassal was bound to assist his Lord in his Offensive Wars, if he knew them to be just ; or if he only doubted of the justice of them : but if the War was manifestly unjust, then he was bound to assist him in his necessary Defence, but not also in the unjust Invasion of others.*] And lastly, If the Vassal upon due Summons refused to give

*Disp. de Feud. c. 4.*

*\* Feud. l. 2. tit. 28. Domino Guerram faciente alicui, si sciatur quod justè, aut cum dubitatur, Vassallus eum adjuvare tenetur : sed cum palàm est, quod irrationabiliter eam facit, adjuvet eum ad eius defensionem, ad offensam vero alium non adjuvet, si vult.*

*Feud. l. 2. tit. 7.*

his assistance, if he deserted his Lord in the time of Battle, if he did not discover all Designs against his Life, Honour, and Estate, that came to his knowledge ; and much more, if he did any thing, that tended to the destruction, or dishonour of his Lord, there were express provisions, that in such, and other Cases he should

*Feud. l. 2. tit. 28.*

should forfeit his Tenure for his Treachery, and Ingratitude.

It is necessary here to observe, That the same Obligations of a Vassal to his Lord, which were required by the Imperial Feudal Law, were also admitted, and exacted by the Common Law of England. It is evident from *Glanville*, [ *That the Vassal was bound to assist his Lord in his Wars; and if he held of more, than one, to fight in his Person with his Capital Lord, even against his other Lords, in case he were so required.* ] Every one knows, that there were anciently several Tenures among us, which were purely Military: and though Tenures upon condition of Services purely Civil were also introduced, such as Soccage, and others; yet even in these the Vassals were obliged to perform Homage, and swear Fidelity to their Lords. And from that ancient form of Homage, which we have in the Statute Book, and in *Bracton*, *Fleta*, and *Littleton*, it is evident, that the Vassal was not only obliged to a Negative Fidelity, which consists in abstaining from Injury; but also to positive services, and assistance of him. The form runs thus, [ *I become your Man from this day forward of Life and Limb, and unto you shall be true, and faithful; and bear you Faith for the Tenements, that I claim to hold of you; saving the Faith, which I owe unto our Sovereign Lord the King.* ]

The Lord Coke in his *Institutes* gives us this Exposition of it. [ *Foial, and Loyal, ( which are words equivalent to faithful and true Allegiance in the Oath before us ) these words are of great extent, for they extend to the observation of the Lord's Counsel, in whatsoever is honest, and profitable: Omnis homo debet fidem Domino suo de vita, & membris suis, & terreno honore, & observatione consilii sui per honestum & utile.* Comprehended in these words, *Foial and Loyal. I become your Man, of Life, and Limb. Therefore he must never be armed against, or opposite to his Lord: but both his Life and Member*

*must be ready for the lawful Defence of his Lord.* ]

And this is sufficient to shew, that by the Feudal Law, as it is received in England, every Vassal is obliged to an active Fidelity and Assistance of his Lord. Wherefore.

2. If this was the Obligation of every Vassal to his Lord; is it possible for Men of sense to imagine, that a lower degree of Fidelity was due to a Sovereign Lord, who had a double right to the Service of his Vassals, a property in their Estates, and a Jurisdiction over their Persons? Has the Law ordain'd, that the Servant shall be above his Master, and the Subject above his Sovereign? Has it provided for the safety of an inferior Lord, and left the Sovereign defenceless? Given the one a right to the utmost service of his Vassal, and obliged the other to be content with a peaceable Indifferency, and a cold Neutrality? Or lastly, Can it be supposed, that Sovereign Princes, who enacted, or introduced these Laws, did intend that their own Subjects should have such a Superiority above themselves in the Fidelity of their Vassals? This surely must be necessarily false, as it is plainly irrational. And to shew that it is so, it will be sufficient to observe,

1. That in the Homage, and Oaths of Fealty made by Vassals to inferior Lords, the Sovereign Lord was expressly excepted. *Spelman*, and others tell us, *In v. Ligii.* [ *That Frederick Barbarossa made a Law, that the Emperor should be expressly excepted in all Oaths of Fidelity; and that this Law was universally received in all Nations;* ] And that it was here observed in England is evident from the form of Homage here inserted, and the ancient Oath of Fealty in *Fleta*. But also.

2. By the same Feudal Laws, the Liege Vassals of the Sovereign were expressly obliged to assist, and defend him against all Persons whatsoever without any exception. This is evident from the very definition of Liege Homage in

*Skene*

Lib. 9.  
cap. 1.

1. Inst. L. 2.  
c. 1.

L. 3. p. 207.

De Exp. Skene, and of a Liege Tenure in the  
 Voc. in v. Feudists, and from the common Form of  
 Liege. Liege Homage here in England, which  
 Feud. De- was made to the King in these Words,  
 clar. ante [I become your man for the Fees and Tene-  
 Lib. Feud. ments which I hold of you; and will bear  
 Fleta ibid. you Faith of your Life, and Limbs, your  
 Body, Chattels, and Terrene Honour a-  
 gainst all Mortals whatsoever.] As for  
 those, who held in Feudo-ligo, that is,  
 immediately of the King; it is undenia-  
 ble, that they were bound for their Fee  
 to assist the King in his Wars; and  
 it is no less certain, that Vassals of  
 Inferior Lords, who held but mediately  
 of the Crown, were also bound to the  
 same assistance of their Sovereign. To  
 this purpose a Passage out of *Willelmus*  
*Nubrigensis*, is cited by *Du-Fresne*, [*Regi*  
*Anglorum tanquam principali Domino homi-*  
*nium cum Ligeantia; i. e. solenni cautione,*  
*standi cum eo, & pro eo contra omnes ho-*  
*mines.*] So *Glanville* informs us, [*That*  
*a Vassal at the Command of the Prince, was*  
*bound to fight against his own immediate*  
*Lord.] And lastly, that Statute of the*  
*Conqueror does expressly prove it, where-*  
*in he commands [All Earls, Barons,*  
*Knights, Serjeants, and all the Free-men*  
*of the whole Kingdom to be always well*  
*provided with Horse and Arms to serve him*  
*as often as need shall require, according as*  
*they are bound by their Lands and Tene-*  
*ments, and as he had appointed them to*  
*do by the common Council of the Kingdom;*  
*and for that consideration had given them*  
*Lands in Fee for ever.*

In v. Lige-  
 antia l. 5.  
 c. 1.

Lamb. Col.  
 Stat. 58.  
 R. Guliel.

Hitherto therefore it appears, that  
 Ligeance in its original signification im-  
 plied an obligation to assist the Sove-  
 reign against all his Enemies without  
 exception. And since all our Oaths of  
 Allegiance are manifestly derived from  
 the Feudal Oaths, it must needs be pro-  
 bable, that the Ligeance universally re-  
 quired of all the Subjects, is not much  
 different from the Feudal, to which it  
 owes its original. And this universal Al-  
 legiance I shall first consider in General;  
 and endeavour to shew the Obligation  
 of it out of our Laws, and Lawyers. Se-

condly, I shall consider it, as it is styled  
 Legal; And Thirdly, Natural Allegi-  
 ance.

1. I am to consider the obligation of  
 Universal Allegiance in general.

*Hotoman* observes, that there are two De ver.  
 kinds of Fidelity; the one perform'd by Feud. in v.  
 Vassals, and the other by Citizens, or Fidelitas.  
 Subjects: And for this he cites a Law of  
 the Emperor *Frederick*, to this effect;  
 [Let our Vassals swear Fealty to us, as Vas- c. 24.  
 sals, and all others as Citizens, from six-  
 teen years to seventy.] And in his Dispu-  
 tations he proves from several Forms of  
 Oaths of Fidelity exacted by several  
 Princes, of all their Subjects, that they  
 do oblige to the same Duties with those  
 required of Vassals: and the Forms he  
 there produces, do particularly oblige to  
 an active Fidelity and Assistance of the  
 Sovereign against all men living.

Agreeably, in this Kingdom, as all  
 the Subjects are therefore called Liege-  
 men, because they are bound unto their  
 King, as Vassals to their Lord; so the  
 Oaths they were required to take, and  
 the Allegiance they were bound to pay  
 unto the King, are the same in substance  
 with the Feudal Oaths, and Obligations  
 of a Vassal to his Liege Lord and Sove-  
 reign. The late Interpreter of the Law-  
 terms, tells us, [That Ligeancy is most  
 commonly used for that Duty, which every  
 good Subject owes to his Liege Lord the  
 King.] And says after *Cowel*, That it is  
 thus defined in the Great Customary of  
 Normandy, \* [That it is an Obligation up-  
 on all Vassals to take part with their Liege  
 Lord against all men living, to serve him  
 with their Persons, Assistance and Advice; tenentur  
 to do him no Injury, nor in any thing to sup-  
 port his Adversaries against him.] So that

The Manly.

\* Ligeantia  
 est, ex qua  
 Domino  
 Vassalli sui  
 contra om-  
 nes homi-  
 nes qui mori possant, & vivere; proprii corporis pra-  
 bere, consilii & auxilii Juvamentum; & ei se in  
 omnibus innocuos exhibere, nec ei adversantium par-  
 tem in aliquo confovere.

hence it is obvious, That this Interpreter took the Allegiance of a Vassal and every good Subject to be exactly the same; and thought this to be a good Definition of it; which is as absolutely inconsistent with a pure Neutrality, or a Reservation of an higher degree of Allegiance to another, as Words can express. The same Learned Interpreter has yet added out of the Lord Coke another more modern Explication of it; viz [That it is the true and faithful Obedience of the Subject to his Sovereign.] But neither will this import a meer Neutrality, or only a peaceable Conformity to the Laws, if we will take the sense of the Author from his own Account of the Duties of Allegiance. He gives us this Definition in Calvin's Case: But in the same Case he positively asserts, [That all the Subjects of this Realm are bound by their Allegiance to discover and oppose all Treasons against the King, to assist him in his Wars, and even to spend their Blood in his Defence.] He gives the same Description in his Institutes also; but he had before explain'd what was signified by Faithful and Loyal; which, according to him, do imply positive Duties of actual Support and Assistance. So that by True and Faithful Obedience in this Definition, must be understood all those positive Duties of Fidelity and Obedience which every Subject owes his Sovereign by virtue of his Allegiance: And what those are, may be clearly understood from the known Laws of the Land, which do plainly intimate and inform us to what Duties true Allegiance does bind us.

I shall here out of many, produce but two Passages only; and the first shall be out of the Act of Recognition. 1<sup>o</sup> Jac. 1. c. 1. [Wherein both the Houses do unto His Majesty most humbly and faithfully submit, and oblige themselves, their Heirs and Posterity for ever until the last drop of their Blood be spent; and do beseech His Majesty to accept of the same, as the first fruits of this High Court of Parliament, of their Loyalty and Faith to

His Majesty, and his Royal Progeny and Posterity for ever.] By Loyalty, here is meant nothing but Allegiance, to which it is equivalent; and hence we may observe, first, That the Parliament here obliged themselves to the utmost possible assistance and defence of his Majesty without any Conditions and Reserves; even until the last drop of their Blood was spent. Secondly, They call this Obligation the first Fruits of their Faith and Allegiance, and therefore certainly contained in them. And, Thirdly, As far as a Law can do it, they oblige not themselves only, but their Heirs and Posterity for ever, and that not to the King then in being only, but to his Royal Progeny also and Posterity for ever.

The other Passage is, 11 H. 7. c. 18. Where it is plainly and expressly declared, [That every Subject by the Duty of his Allegiance is bound to serve and assist his Prince and Sovereign Lord at all Seasons when need shall require; and in particular, against his Rebels and Enemies, for the suppressing and subduing of them.] This is so exprets and authentick a Declaration of the true Duty of Allegiance, that no Art nor Sophistry can possibly evade it. And upon this Statute among others, did K. Charles the Martyr justify his Commissions of Array in his Proclamation against Levying Forces; and in another, for setting up his Standard, he required all his Subjects on the North-side of Trent, upon their Allegiance to repair to his Royal Standard at Nottingham, for his just and necessary defence. So that this is not an obsolete and antiquated Notion of Allegiance, but such as our Laws both ancient and modern have ever exacted, such as the Sages of the Law have often inculcated, such as our Kings have always claimed, and their Loyal Subjects have yielded them in their necessity.

I shall only observe further, That it seems to be a Maxim universally received by all the Feudists and Lawyers; *Quod nemo potest esse Lignus ducum*; or as

Spelman in  
v. Fidelitas,  
p. 225.

So also, 7  
Ed. 1. 11 H.  
7. c. 1.

Cowel



*Cowel* after *Stene* expresses it, [ That Li-  
geancy is such a Duty or Fealty, as no man  
may bear to more than one Lord. ] And this  
Rule is founded on that Aphorism of even  
Truth it self, *No man can serve two Ma-  
sters*; that is, two absolute and independ-  
ent Masters at once: For if one be sub-  
ordinate to the other, then both may be  
served faithfully in a due subordination;  
and thus the same person may be a Vas-  
sal to an Inferior and a Capital Lord, to  
a Subject and a Sovereign: But Ligeance  
being now constantly taken for the Oblig-  
ation of Fidelity to a Sovereign Lord  
against all men living; it would be a very  
gross contradiction to say, that the same  
person may be the Liegeman of two So-  
vereign Princes at once, because it is  
impossible he should adhere to both a-  
gainst all men living; and this will be yet  
more absurd, if the two Sovereigns be  
in open hostility, and mutually endea-  
vouring to destroy each other; for then  
adherence to the one must necessarily be  
Treason against the other; and the  
Liegeman will be bound to assist, & to op-  
pose, to defend, and to destroy them both.  
The reason of that Maxim therefore is  
very evident. And hence it appears,  
how absurd it is to make Allegiance  
signifie Neutrality; whereby the Subject  
becomes the Liegeman of two Sovereign  
Princes; or to speak properly, of nei-  
ther; or else to signifie Fidelity to one  
King with a Reserve of assisting ano-  
ther King to destroy him. But the Law  
has no where obliged us to such cross  
and contradictory Obligations: And as  
for those subtle Distinctions between a  
higher and lower kind of Allegiance; an  
Allegiance due to a King *de facto*, and  
another at the same time to a King *de  
jure*; an a solute and a conditionate, an  
active and an unactive; a reserving and  
an unreserving Allegiance; I may say  
concerning them (as Judge *Jenkins* did  
of Acts of Parliament without the Kings  
Assent, [ That no man can shew any Syl-  
lable, Letter, or Line to authorize them in  
the Books of the Law, or Printed Acts of  
Parliament in any Age in this Land ] For

since it is not yet done, I presume that  
that it cannot; and it is another Maxim in  
the interpretation of all Laws, Civil and  
Divine [ *ubi Lex non distinguit, ibi non di-  
stinguendum est.* ]

Such is the nature of that Allegiance  
in general, which is universally due from  
all the Subjects; and this is next to be  
considered, as it is still *Legal Ligeance*;  
and this doth not import, as the Word  
seems to intimate, an Allegiance bound-  
ed and circumscribed by Law; but it is  
therefore so called, because the Law re- *Calvin's*  
quires it of every Subject upon Oath, and Case.  
has prescribed the Form and manner  
of it.

Though Allegiance be universally due  
by all Laws, Civil, Natural and Divine;  
yet the security of the Sovereign Power  
being of such vast importance to the  
preservation of Peace and Justice, and  
even to the very Being of Law, and  
Political Society, as that they cannot  
possibly subsist without it: the wisdom  
of the Law has thought it necessary to  
tie all those Obligations faster by the sa-  
cred bond of a Religious Oath, and to  
assure the fidelity of the Subjects to their  
Sovereign, by making God himself the  
Guarantee and Surety of it. And hence  
it is, that in all Ages, such Oaths of true  
Allegiance have been ever exacted of  
all the Subjects of this Realm to the  
Kings thereof: which, as it is the most  
demonstrative proof, that the Sovereign  
Power was always acknowledged to be  
theirs, Allegiance being an Essential  
Right of Sovereignty, and never so much  
as pretended to by any others; so it is al-  
so evident from the very Terms of those  
Oaths, ( which have been different in  
Words, but the same in Substance, )  
that the Subjects were always bound to  
an active, unconditionate, and unre-  
served Fidelity to their Princes.

There is this Statute among the *Limb. Leg.*  
Laws of Edward the Confessor, [ That *E.I. Conf.*  
all the People of this Kingdom should once a  
c. 35.  
Year

*Et apud* Year bind themselves together by an inviolable Oath, and combine as sworn Brethren, & Fidelity to defend the Kingdom together with their Lord the King against all Foreigners and Enemies, and with him to preserve his Lands and Honours with all Fidelity; and that they will be faithful to him, as their Lord the King, both within and without the Kingdom of Britain.]

To the same effect, tho somewhat different in the Expression, was the Statute made by William the Conqueror, [That all the Freeman of this Kingdom should affirm upon their Faith, and Oath, that within the whole Kingdom, and without, they will be faithful to their Sovereign Lord K. William, and every where preserve his Lands and Honours with all Fidelity, and with him defend them against all his Enemies.]

To this succeeded that, which the Lord Coke calls *Legal Ligeance*, or the Common-Law Oath of Allegiance, which he cites out of Britton, who wrote *Anno 5. Ed. 1.* which all the Subjects were obliged to take at Twelve Years of Age at the Sheriffs Court, or the Leete, and without the taking of which they had no warrant to abide in the Kingdom: and the Form of it was to this Effect. [You shall swear, that from this day forward you shall be true and faithful to our Sovereign Lord the King, and his Heirs; and Truth, and Faith shall bear of Life, and Member, and terrene Honour; and you shall neither know nor hear of any ill or Damage, which you shall not defend (that is, oppose) to the utmost of your Power.]

Coke informs us, that Five things were observed by all the Judges upon this Oath. [First, That for the time of its Obligation, it is indefinite and without limit. Secondly, Two excellent qualities were required, that is, to be true and faithful. Thirdly, To whom? to our Sovereign Lord the King, and his Heirs. Fourthly, In what manner? and Faith, and Truth shall bear of Life and Member; that is, until the

letting out of the last drop of our dearest Heart-blood. Fifthly, Where, and in what place? In all places whatsoever. For you shall neither know nor hear of any ill, which you shall not defend.] Such is the Ligeance, which the Law has prescribed in that ancient Oath, which is still in force. It is neither circumscribed by time nor place; it is unconditionate and unreserved; it is not a lazy Passive Allegiance, requiring nothing but pure Submission; but an active and vigorous Loyalty, exacting all that is in the Sphere of Moral Possibility, and engaging us to spend our dearest Blood in the defence of our Sovereign's Person, and the preservation of his Crown and Dignity to him.

For it is to be observed, that by the Law all this Allegiance is due to the King's Person. So the Lord Coke says it was then resolved by all the Judges, [That Ligeance was due to the natural Person of the King, (which is ever accompanied with the Politick Capacity; and the Politick Capacity, as it were appropriated to the Natural Capacity) and not due to the Politick Capacity only. And he adds, that when the Spencers in the Reign of Ed. 2. invented this damnable Opinion, That Homage and Oath of Ligeance was more by reason of the King's Crown, that is of his Politick Capacity, than by reason of the Person of the King: this with the Consequences they deduced from it, was condemned by two Parliaments as execrable and detestable Doctrines; one in the Reign of Ed. 2. and the other Anno 1<sup>o</sup>. Ed. 3. c. 1.

And what was then resolved, Judge Jenkin out of Plowden affirms was resolved by all the Judges 1 Eliz. as the Law of England, viz. [That the Body Politick, and the natural Body make one Body, and not diverse, and are inseparable and indivisible.] And hence the same Learned Judge thought he had reason to infer, [That the natural Person of King Charles the First being at Holmby (though under Custody, and de facto divested of his Regal Power

*Ibid.*

*His Works, p. 71.*

*Ibid p. 16.*

Procl. a-  
gainst Le-  
ving For-  
ces.

Lid p. 22.

Power, yet) his Politick capacity was there also, because both did make but one indivisible Body.] And hence it was, that King Charles himself required all his Subjects, [to take notice of the Law, that Allegiance is due to the natural Person of their Prince, and not to his Crown, or Kingdom distinct from his natural Capacity; and that by the Oath of Ligeance at the Common Law, they were bound to be faithful not to the King only, as King, but to our Person, as King Charles.] Therefore I conclude this Observation with that Assertion of the same Judge Jenkins [That Ligeance is due to the Natural Body, and is due by Nature, God's Law, and Man's Law, cannot be so forfeited, nor renounced by any means; it is inseparable from the Person.]

To return then to the Oaths of Ligeance prescribed by the Law, it is further to be observed, that tho the Common-Law Oath was never yet abolished, yet it has been almost totally supplanted by that larger Oath of Allegiance, which was enacted Anno 3<sup>o</sup>. of King James the First; and which many of us have taken to K. J. the Second. And though this Oath upon the discovery of the Powder Plot was particularly framed, and design'd to secure the King against the Treasons of the Papists: yet as K. James himself does affirm in his Apology, that it exacts no more, than what the ancient Oaths of Allegiance did require; so it is certain it exacts no less. For it is not to be imagin'd, either that true Faith and Allegiance in that Oath should be design'd to signifie less, than they always did before; or that a less Security was requir'd, when a greater was intended. But to prevent all Subterfuge, even the express Words of the Oath do manifestly oblige to the highest Duties of Ligeance that can be. [I will bear true Faith and Allegiance to the King, his Heirs, and Successors; and him, and them will defend to the uttermost of my Power against all Conspiracies, and Attempts whatsoever, that shall be made against his, or their

Persons, Crown, and Dignity.] What kind of Assistance is here meant by the Word Defend may be understood from the Authors, who expound the *Jus in seipsum*: such as *Magirus de Advocatu armata*, who treating of the Protection given by Sovereign Princes, saith [That *verbum protegere*, necessitatem Defendendi cum armis importat;] and tells us, That Subjects are in the same sense reciprocally bound to defend the Honour and Dignity of the Sovereign: it may be understood likewise from the Feudal Laws, whereby the Vassal was obliged to a Military defence of his Lord, and from the Municipal Laws of this Kingdom also: which oblige all the Subjects that are capable to take up Arms for the King, when need shall require. This therefore was the Defence to which capable Persons were sworn in that abrogated Oath; and others were obliged to give him that assistance, which they were able, every one to the utmost of his Power in his respective Capacity as the express Words of the Oath do require.

Thus have I given a brief Account of the several Forms of swearing Allegiance, which have been successively required of all the Subjects of this Kingdom; and upon the whole, I think it sufficiently appears, that the Laws have been always Uniform, and constant in obliging the Subjects to an Allegiance, that requires not a peaceable Subjection only, but also an actual assistance of our Sovereign to the utmost of our Power against all Persons, and all Attempts whatsoever without any exception.

And this is lastly included in the Obligation of Natural Allegiance also; which is not so called meerly, because the Persons obliged by it are such as have their natural Birth within the King's Dominions: For Persons born without the Realm may be his natural Subjects, as are the Children of Embassadors born Calverts beyond Sea; and the Children of Aliens born.

C. 12. n. 95.

*As Coke,  
Spelman,  
Jenkins,  
Vaughan.*

born within the Kingdom are not therefore Natural Subjects of the King : So that the meer Circumstance of Birth does not entitle any one to the Privileges of a Natural Subject, nor consequently bind him to all the Duties of Natural Allegiance. But it is therefore called Natural in our Laws ; because, as great Lawyers have affirm'd, it is founded upon the Law of Nature, which gives the Sovereign Power a Right to the Allegiance of every one, who is born under the Jurisdiction of it. As every Son is born a Subject to his Parents, and is by the Law of Nature obliged to honour, and obey, assist, and support them : So also is he born a Member of the Body Politick, and by consequence a Subject to the Sovereign of it, and accordingly by the same eternal Law is bound to pay all Faithful Service and Obedience to him, when he is in a Capacity to perform them.

By the Law of Nature here I mean, that light of reason, which is given us by the Author of Nature to direct us in all our actions : and this light, when it is sufficiently attended to, and not darkened with Passions, will clearly shew us how we should demean our selves in the several capacities, and relations we stand in. As it shews us what Obedience and Fidelity a Servant owes to his Master, a Wife to her Husband, and a Son to his Father : so it plainly directs us what Duties every Member of a Civil Community owes to the Supreme Governor of it : and that this Law of Nature directs us to pay the highest degree of Allegiance to him ; *viz.* an active assistance to the utmost of our power, is evident both from reason, and from the common consent and practice of almost all civilized Mankind, the two only ways of demonstrating any Law of Nature. And first it seems evident from these following reasons.

1. Because such assistance is absolutely necessary to preserve the head of the Community, and consequently the whole

Body also : for to every Political Body a Sovereign Head is so Essential, as that it cannot possibly exist without it. And therefore since the natural reason of all Men does dictate the necessity of entering into Societies ; it must likewise teach them the necessity of contributing their actual assistance for the preservation of those Societies, and consequently of that Sovereign power, which is Essential to the very Being of them.

2. Because every Subject has received actual Protection, and in effect his very Life and Being from the Sovereign Power. For not only Property, and all the Blessings of it, but the Conservation of even Life it self are derived from Civil Government : and therefore both Justice and Gratitude do oblige us, to do all we can, to preserve the Being, and the Rights of that Sovereign Power, from which we derive our own. Our Parents are the Instruments of our natural Production, and for that reason we are ever obliged to honour and support them, though they prove never to unnatural to us ; because it will be always true, that we have received our Being from them, and the Obligation of that benefit will last as long as our lives. Such is our Obligation to the Sovereign Power. We have received our Lives, and Properties from it ; and it will be always true, that we owe them to it : and therefore, though it become never so Tyrannical, still the Obligation of obeying, and assisting it will remain. Our gratitude must continue as long as we enjoy the benefit ; and civil oppression can no more absolve Subjects from their Allegiance, than Domestick Cruelty can discharge Children from the Duty of Obedience.

3. It may be proved also from the Obligations of Equity and Justice, which are certainly founded in the Law of Nature. Now the grand Fundamental Rules of Justice are these. That we do to others, as we would be done to our  
selves



selves; and that we give to every one his due: and by both these equitable Rules all Subjects are bound to assist and support their Sovereigns. By the former, because every Subject does expect an actual Protection of his Person and Property from the Sovereign power; and that when he is disabled, from contributing his assistance to support it; and therefore he is bound in Equity to give the like assistance to his Sovereign in times of necessity, and even when he cannot actually exert his Power for the protection of his Subjects. It is also due by the latter; because the Sovereign has a Right to such assistance of his Subjects ( I will not here say by the Law of Nature, for that is the thing, which I am proving, but ) by the positive Civil Laws of this Kingdom. The Law of Nature requires, that every Man should enjoy his Rights; and that is truly a Man's Right, which is such by a Politick Law; and therefore since the Kings of England by the Political Laws of this Kingdom have a Right to the actual assistance of their Subjects, to deny it them is a violation not only of those Laws, but even of the Law of Nature also. But,

4. There is yet a higher reason for it, which respects the Author of all Sovereignty. For even the Light of Nature doth teach us, that an infinite Being made the World, and that he still governs it; that from Him all lawful Dominion is derived; and that Kings are his Ministers, and Vicegerents. And hence it is obvious to infer, that every Subject is bound not only to submit, but also to support, and defend them; because it is every Mans duty to support that Government, which God himself has established over him.

\* Tertull.

Apol. c. 32.

Nos Judicium Dei

*suspiciamus in Imperatoribus, qui Gentibus illos profecit, id enim in eis scimus esse quod Deus voluit, ideoque & saluum ipsum esse volumus, quod Deus voluit.*

2. It is evident also from the universal practice, and consent of almost all

Nations. This might be evinced from an Induction of particulars. But I think it will not be denied by any, that where-ever Civil Government has been established, and in what form soever, it has been always thought the Duty of every good Citizen, or Subject, to adhere to the Sovereign power of his Country, against all his Enemies, and even to adventure his own life for the preservation of it. And hence it is, that there is hardly any Government in the World, wherein every individual Person, that is capable of bearing Arms, is not obliged upon some great occasions personally to assist the Sovereign Power, and hazard his life in its defence. And this is a manifest Indication, that the Duties of Allegiance were first taught Men by the Light of Nature, since the universal exacting of them can be ascribed to nothing else, but such an universal Principle.

Wherefore Dr. Sanderson had reason The Case to affirm, [ 'That the Bond of Allegi- of the En-  
'ance doth not arise Originally from the gagement.  
'Oath of Allegiance; but it is so intrin-  
'secal, proper, and essential a Duty, and  
'( as it were fundamental to the relation  
'of a Subject *quà talis* ) as that the ve-  
'ry name of a Subject doth after a sort  
'import it; insomuch that it hath there-  
'upon gained in common Usage of  
'Speech, the stile of Natural Allegiance. ]  
Whence he affirms these Inferences will follow.

1 'That the Bond of Allegiance (whether sworn, or not sworn) is in the nature of it perpetual, and indispensable.

2. 'That it is so inseparable from the relation of a Subject, that tho' the exercise of it may be for some time suspended, by a prevailing force, yet it cannot be so absolutely removed, but that it still remaineth virtually in the Subject, and obligeth to an actual exercise of it upon all fit occasions.

C

3. 'That

3. 'That no Subject of *England*, that hath either by taking the Oaths of Supremacy, and Allegiance acknowledged, or otherwise believeth, that the Sovereign Power, to whom his Natural Allegiance is due, is the King, his Heirs, and lawful Successors; can without sinning against his Conscience, enter into any Covenant, Promise, or Engagement, or do any other Act whatsoever, whereby either to transfer his Allegiance to any other Party, to whom it is not of Right due, or to incapacitate himself to perform it to his lawful Sovereign when it may appear serviceable to him.

Calvin's  
Case.

And what was asserted by this great Casuist, is for the substance of it deliver'd by the great Oracle of the Law; who in the aforementioned Case reports, that these Positions were debated, and resolved on by all the Judges. [ 'First, That the Ligeance of the Subject is due by the Law of Nature. Secondly, That the Law of Nature is part of the Law of *England*. Thirdly, That the Law of Nature was long before any Municipal Law. Fourthly, That it is immutable. It appears, says he, by demonstrative reason, that Ligeance of the Subject to the Sovereign was before any Municipal or Judicial Laws. First, For that Government and Subjection were long before any Municipal Laws. Secondly, It had been in vain to have prescribed Laws to any, but to such as owed Ligeance before: *frustra enim feruntur leges, nisi subditis, & obedientibus*. Seeing then, that Ligeance is due by the Law of Nature, it follows, that the same cannot be altered, or taken away. For albeit Municipal Laws have in several times and places, imposed several punishments for Breach of the Law of Nature; yet the Law of Nature it self, never was, nor could be changed: and this, says he, appears plainly, and plentifully in our Law-Books. ] And afterwards he argues thus upon the same Principle. 'Whatsoever is due only by

'Law and Constitution of Man may be alter'd; but naturally the Ligeance of the Subject to the Sovereign cannot be alter'd; therefore it is not due only by the Law and Constitution of Man. [And again, Whatsoever is due by the Law of Nature cannot be altered: but Allegiance is due by the Law of Nature: therefore it cannot be alter'd. ] Thus far that famous Lawyer; and thus far have I consider'd the signification of Allegiance, as it is founded in the Laws, and explained by Lawyers.

I am further to consider it, as a word of vulgar signification also; and as it is taken, and understood by the Generality of the People of this Nation. For all the Subjects of this Kingdom being obliged by Law, and immemorial Custom, to swear Allegiance to their Sovereign, it is not credible they should be ignorant of the true meaning of it. Those Law terms, in which few are concern'd, are by few understood: but such as are of universal concernment must of necessity be also universally understood. Who knows not the meaning of *Parliament, Jury, Assizes*, that is of any understanding? The word *Allegiance* is of more near, and universal concernment to all Men; it is therefore presum'd, that no Subject can be ignorant of it. The Oaths themselves, which the Subjects have ever been enured to have, sufficiently taught them the Duties intended by it. That they must pay due Obedience to the King; that they must never assist his Enemies; that they must uphold his Crown, and sometimes adventure even their Lives and Fortunes in his Service. Thus much Nature it self does teach them, as it teaches Children to discharge the same Duties towards Parents. But there is no need of proving a thing to be that, which it is. Most certain it is, that all Men of tolerable understanding, even among the common People, do know, that all these Duties are included in true Allegiance. Ask any Man of common sense, whether he, who

has

has sworn true Faith and Allegiance to K. W. does not violate his Oath, if at any time he assist K. J. to dethrone him? Whether he is not bound to be faithful to him against all his Enemies? To discover all the designs of K. J. against him, that shall come to his knowledge? And when it is in his power, and necessity requires it, to contribute his actual Assistance also to oppose his Recovery of the Crown? I make no Question but he will answer, that his Allegiance binds him to all this; and that he is plainly perjur'd, if he does not perform it.

The Understandings of the common People, as they are not capable of those Subtilties, which men of Learning are enur'd to; so are they seldom perverted with those nice and sophistical Distinctions, by which men of Subtilty perplex things plain and easie in themselves. A Mechanick, and a Peasant apprehend what Motion is, and what is Perjury, as well as the acutest Philosopher, or the deepest Divine; and they know what Allegiance and Faithfulness imply, as well as the ablest Lawyer; and if you go about to blunder their understandings with Distinctions, and Objections, they are but where they were, and will still clearly apprehend what they understood before. And if all men would act with the same plainness, and sincerity; if they would be true to their own sense, and apprehensions, and not disguise them with Artifice, and Subtilty, there would possibly have been no need of the present Enquiry; nor of proving, that Faith and Allegiance are not capable of contradictory senses; that they signify the same Duties now, which always they have done; that, when they are sworn to one Sovereign, they are incommunicable at the same time to any other; that we must not bind our selves to contradictory Obligations; and cannot possibly be faithful to K. W. against all his Enemies, and to K. J. against all his Enemies also.

And now I hope, it appears, That the Words, *Faith, and true Allegiance*, in the Oath, do not signifie meer Submission and Obedience only; but also faithful Service, and actual Assistance of our Sovereign against all his Enemies. True it is, that the *Oaths of Allegiance* are in the Law sometimes called *Oaths of Obedience*: But Obedience then does import the whole Duty of a Subject to his Sovereign, and not precisely a peaceable conformity to the Laws, abstracting from all the other Duties of a Subject. And this I think may be proved from these Reasons. First, Because Obedience, in its utmost Latitude, does comprehend the Duties of Fidelity, and Assistance also. For every act of Duty is an act of Obedience; and therefore if actual assistance be a Duty to discharge, it is Obedience. Secondly, The same Oath is more often called the Oath of Fidelity, and the Oath of Allegiance: And therefore if Fidelity and Allegiance do (as I have shewn) imply more than peaceable submission, and conformity to the Laws; it will not follow, that it does not imply so much, because the same Oath is sometimes expressed by another word. Thirdly, Peaceable Submission, and Obedience to the Laws, do amount to no more, than such a Local Allegiance, as is due from Aliens; and I am pretty certain, that the Laws require something more of natural *English* Subjects by virtue of their Allegiance, than they do from *Germans* and *Italians*, while they are in the Kingdom.

This confounding of Allegiance and precise Obedience to the lawful Commands of a Sovereign *de facto*, is a very common and obvious Mistake. Thus the Author of the *Pastoral Letter*, brings this Argument to prove the lawfulness of taking this Oath in Question; [ *If it is lawful to obey the King, it is lawful to promise to do it; and if so, it also is lawful to swear it;* ] therefore it is lawful to take the Oath of Allegiance. Which is just such an Argument as this: If it be

lawful to bow before the King, it is lawful to pay Divine Adoration to him; and if so, it is also lawful to swear, that I will pay Divine Worship to him. For as Religious Worship implies a great deal more, than Civil; so does Allegiance contain more, than precise Obedience. I may lawfully obey a Highway-man, and I may lawfully swear it; but I suppose it will not follow thence, that I may lawfully swear to be faithful, and bear true Allegiance to him. It was lawful to swear Obedience to *Cromwel* in all lawful things; but I think there were few, even in that Age of Usurpations, that were so hardy, as to assert the lawfulness of swearing Allegiance to that Unnatural Usurper. Dr. *Sanderfon* proves, that it may be our duty to obey the Laws of an Usurper, not out of any regard to his Authority, which, he says, is none at

\* Præl. 5. S. 20. *Regni Invasori sic præstandum est obsequium, ut Fidelitas legitimo heredi debita nullatenus violetur.* So also in the Case of Engagement, and his Censure upon *Ascham*.

all; but upon other considerations: \* yet he is absolutely against swearing Allegiance to Usurpers. Both he, and all the Conscientious Divines of that Age, could easily distinguish Allegiance from Obeying; and so may any one, that is not absolutely resolved against it. The Pastoral Author adds indeed, [ That Allegiance, in our present acceptation, is Obedience according to Law, ] Which is true, if Obedience be taken in its utmost latitude; but then it will include an Obligation to assist K. W. against all his Enemies; and in this sense, they, who refuse the Oath, will I presume, refuse also to obey him.

It has been objected further, That, whereas the actual Assistance of the King against all Attempts whatsoever, was inserted either expressly, or in words equivalent, in all the former Oaths of Allegiance; but in the present Oath it is wholly omitted, and therefore it may reasonably be presum'd, That where less is expressed, less is required; and that, if the Imposers had intended such

actual Assistance, they would probably in plain words have required it. What the Reasons were of making this, and other Alterations in the new Oath of Allegiance; as I have no means of knowing, so neither is it of any moment to enquire. To the Objection proposed, it will suffice to answer, That the Duty of actual Assistance against all men living, is sufficiently expressed in it: For in the Oath we are required to swear true Allegiance, and that does *vi termini* import such an Obligation: and as no particular Duties of Allegiance are expressed in the Oath, so neither are any excepted; and therefore we are obliged to all the Duties of it: and what those are, may be understood from the Laws, and the common acceptation of the Word it self; which, as I have shewn, has always signified an adherence to the Liege Lord against all men living. And if the bare omission of particularizing this Duty, is an argument, that it was not intended; then was no particular Duty intended, for there is none expressed: and so the result will be, that when we swear Allegiance, we take God's Name in vain, and swear to nothing at all.

And this is the Answer, which the Feudists have long since given to the Objection. *Cujacius* says, [ That the Clause of defending the Life and Dignity of the Lord, and if there be any thing else, which is wont to be expressed in such Oaths, it seems to be contained in the general Promise of Fidelity ] *Molinæus* tells us, \* [ That a certain Form is not required, but it may suffice to swear in general words: tit. 1. de Fides. c. 3. ]

Glo. 4. *Non requiritur certa Jurandi formula, sed sufficit simplicibus verbis Jurare; puta Juro fidelitatem Clientelarem, vel facio Fidem & Homagium sub Sacramento Fidelitatis; nec est necesse sigillatim exprimere Capitula Fidelitatis, quia satis subintellegitur per tacitam relationem ad ea, quæ de Jure & Consuetudine Feudorum debentur.*



as for instance; I swear the Fealty of a Vassal, or I do Homage under an Oath of Fealty: neither is it necessary particularly to express the Heads of Fidelity; for that is well enough understood by a tacit reference to those Duties, which are required by the Feudal Law and Custom. And he adds, it may be also answered, That Particular Duties are not therefore expressed in those Oaths, because it is absolutely necessary, but only for the clearer understanding of them.]

But there is one Objection more, which must be considered, viz. That this is an Oath imposed upon Clergy-men, as well as others: and that since the Laws have ever exempted them from Military Services, it is certain their Allegiance doth not bind them to it; and therefore the Allegiance required in the Oath, is not such, as I have hitherto asserted, because it does not universally bind the Subjects to an Active Military assistance of the Sovereign against all his Enemies.

But this Objection will be of no force, if it be considered,

1. That Allegiance binds in general to the defence of the King's Crown, and Person; which implies many other positive Duties besides Military Assistance; as, Aids of Money, and Advice, Discovery of Conspiracies, and the like. Now if the Laws, which have obliged Subjects in general, do exempt Ecclesiastics from the Military Duties of Allegiance, then there is an express exception of them as to those Duties; and this very Exception does shew, that they are obliged to all the other Duties of Allegiance, which are as absolutely inconsistent with a peaceable Neutrality, as the Military Assistance can possibly be.

2. Though the Laws have ordinarily exempted Clergy-men from taking up Arms in the Defence of their Sovereign,

yet it was never doubted, but that in Cases of extream necessity, when the Life of the Prince is in imminent danger, and there are no other Persons to defend it, and it is in the power of a Churchman to save it, though with the hazard of his own, that in such an Exigency he is bound by his Allegiance to a Personal and Military assistance of him: and therefore it is still true, that all the Subjects are bound by their Allegiance to a Military defence of their Sovereign, when necessity shall require it. And yet further.

3. Though Spiritual Persons are not ordinarily obliged to defend their Sovereign with secular Arms; yet their Allegiance binds them to do it with Arms more prevalent, and efficacious, viz. Prayers, and Intercessions with God for their safety, and Victory over all their Enemies. Thus Zuch tells us out of the Grand Customary of Normandy " [That Bishops, and other Ecclesiastical Persons, (who held Lands granted in Frank Almoine, or in *perpetuum Eleemosinam*;) are bound to no other Service, but to pray for the Prince, and intercede with God for his safety.] This is a Branch of Allegiance most especially incumbent upon them, who wait at the Altar; less, than this, cannot in reason be required of them, and a greater, and more beneficial Service cannot possibly be perform'd by any one. And it was never yet heard, that a Church-man could with a good Conscience swear Allegiance to a Prince; and yet could not pray, that he might have Victory over all his Enemies. This is a branch of Allegiance, which our Church has expressly required of us in her Liturgy; nay it has been taught us by the Catholic Church of all Ages, wherein Prayers have been constantly made for Peace and Safety, for Prosperity and Victory, not unto Christian Emperors only, but even to the most Cruel Persecutors of Christianity. And if this

Def. jur.  
temp. Sec.  
Consuet  
Feudales  
Pars 1.  
Sect. 9.

V. Comber  
upon the  
Liturgy.  
p. 242.  
Terrall.  
Apol. c. 30.

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be the duty peculiarly of Churchmen, then it is their duty undoubtedly in their Stations to contribute all other actual Assistance also; and if this be a necessary branch of Allegiance; then it is evident, that we cannot swear Allegiance with a design of Neutrality, or a reserve of Allegiance to K. J. for then we should be obliged to pray reciprocally backward, and forward, that J. may vanquish W. and W. vanquish J. and that both may have Victory over all their Enemies, when they are irreconcilable Enemies to each other.

Wherefore to conclude this Point. If it be true (as I have endeavoured to prove) that Faith, and true Allegiance in the Construction of the Law; and the common Sense and Understanding of the People, do signify such an Allegiance, as is expressed in the highest Construction of the Oath; it is evident, that this Construction is the true declared meaning of it. For the declared meaning must be expressed in Words, and Words must be understood according to the known, the usual, and genuine Signification of them; and if Men will take a liberty of imposing a quite different sense upon them at their pleasure, there is an end of all Promises and Oaths, of all Faith and Commerce among Mankind; and then I know not why in the present Oath W. may not signify J. and Allegiance Rebellion.

Hitherto I have been proving, that the Reason and Intention of the Oath, and the words themselves in which it is expressed, do necessarily oblige us to the highest Construction of it: And where there is a manifest concurrence of both these in the Interpretation of an Oath, than there is nothing wanting to induce a Moral certainty of the true meaning of it. But because the Intention of the Imposer may be searched into by other means, besides the naked force of the Words, as by pro-

bable Conjectures grounded upon Circumstances; and their other Impositions and Proceedings, which have some relation to the Matter of the Oath; I will proceed to shew, that even these also do afford reasonable grounds to persuade the Sense, I have here asserted, to be the true meaning of it.

But here there are two Cautions to be premised. First, That when the words of the Law do according to the Vulgar, Customary, or legal Acceptation of them, evidently express the Intention of the Lawgiver, then the Enquiry into the same Intention by Circumstances and Appendages, is of no importance; for the Words are the first and principal Sign of the Intention, and when they do clearly represent it, the Conscience of the Subject is obliged to the very Words; otherwise it is impossible we should be ascertain'd of the meaning of any Law; if no words, how clear soever, can express it; and so to make a Law would be a thing impracticable, because the Will of the Lawgiver could not possibly be expressed. Therefore Secondly, The Words of the Law being the best and surest means of expressing the Intention; unless clear, and manifest Evidence can be produced to shew, that the Intention of the Lawgiver is quite different from what the natural sense of the words does import; the genuine Signification of them is always to be adhered to. So says the Civil-Law expressly [*non aliter a significatione verborum ejus recedi, quam cum manifestum aliud ipsum sensisse.*] and the necessity of this Rule is evident; for if it were allowed to recede from the words but upon manifest Evidence of a different Intention, every one might wrest the Law as he pleased, and the Law would not be the measure of Duty, but the Subjects Arbitrary Glosses on it.

Supposing therefore, not granting, that the words of the Oath do not clearly represent

Dr Taylor  
Ductor du-  
bit. p. 123.  
Suarez de  
leg. p. 150.  
n. 7.

Taylor  
ibidem.

Suarez.  
p. 418.

represent the Intention of the Legislators ; proceed we now to enquire into the true meaning of it, from Circumstances, and other Actions of the Imposers. And,

1. I consider, that the Parliament, in the Act declaring the Rights, and Liberties of the Subject, and settling the Succession of the Crown, have imposed [this and no other Oath] upon their Military Officers and Soldiers : And it seems very absurd to imagine, that they should intend to oblige them only to a peaceable Neutrality ; or leave it lawful for them, notwithstanding the Oath, to assist K. J. against themselves. But if on the contrary it be reasonable to believe, that they intended to oblige their Soldiers to an active assistance of K. William against all his Enemies ; then of necessity, according to the Intention of the Imposers, the very words of the Oath do oblige them to it : And if so, I cannot comprehend, why the same words should not oblige all others also in their respective Capacities to the like assistance : Or why the Legislators should intend the Oath to be taken by different Persons in contradictory Senses, and bind one to be a Neuter, another to be Active for the Government, and allow a Third to be active against it.

2. It is certain, that the Present Government has exacted of all Clergymen an actual assistance of it (as great at least as that which is required of Soldiers) even against K. J. For they are obliged under great Penalties, to insert K. W. in the Liturgy, and to pray that he may have Victory over all his Enemies ; among whom his greatest, and most implacable Enemy, the Enemy that is actually endeavouring to wrest his Crown and dignity from him, must needs be comprehended. And thus to pray, is the greatest assistance to the one, and opposition to the other, that can be imagined. And hence it seems natural

to infer ; that they, who have exacted this, would not afterwards Enact an Oath to oblige them to a meer Neutrality ; or leave them a reserve of their old Allegiance to K. J. What reason can there be possible assign'd for this ; that they, who were antecedently bound to more, should be afterwards sworn to less ; or that our Present Governours should oblige Clergymen to pray against all their Enemies, and then allow them to assist those Enemies, or discharge them from assisting the Government against them.

3. Though every breach of Allegiance is not punished as Treason by the Law, yet all Treason is certainly a violation of Allegiance ; therefore whatsoever is branded, or punished as Treason by the Lawgivers, and Imposers of this Oath, is very probably intended to be forbidden by it. Whether this Inference be not reasonable, I appeal to the common Sense of all Men ; or whether any thing can be more natural, than to conclude, that the Lawgivers intended in this Oath of Allegiance to prevent, what they design'd to punish as a violation of it ; and to bind the Subjects to Fidelity, not only for Wrath, but also for Conscience sake. But it is notorious to all Men, that the Imposers of this Oath, have treated the Assisters of K. J. as guilty of High Treason ; that Bills have been propos'd for the forfeiture of their Estates, and Tryal of their Persons ; that they have imprison'd many upon suspicion of siding with K. J. and actually Arraigned others for dispersing his Proclamations : And have lately Condemn'd and hang'd one, for saying he rais'd Men to assist him. And therefore we cannot but conclude ; that they, who punished such assistance, as a breach of Allegiance, did design, when they obliged us to swear Allegiance to debar us from it. Thus it is evident the assistance of K. J. is forbid in the Oath ; and it will be further evident, that so

is a Neutrality also; if it be considered, that there is no doubt, but even the not discovering of any designs of K. J. against the Crown and Dignity of K. W. that should come to our knowledge, would be punished by the same Authority, as an Offence contrary to our due Allegiance to him. And therefore since such a discovery is plainly inconsistent with an exact Neutrality; it is obvious to infer, that a Neutrality, which in the Judgment of our Lawgivers is against our due Allegiance, is forbidden by them in the Oath of Allegiance.

4. Lastly, The highest Construction of the Oath seems to be most agreeable to all the Principles, and Proceedings of the Imposers. This might be demonstrated by many particulars, but most especially from the very *Instrument of Government*, wherein this Oath had its Birth. There they first declare, That K. J. had abdicated the Government, and that the Throne was thereby vacant: then they confer the Royal Dignity upon W. and M. as King and Queen of *England*; and then annex the present Oath of Allegiance to be sworn unto them. So that if we take all together, we may probably conclude, that they intended a full, absolute, and unreserved Allegiance to them. By their first Declaration it appears, to be their Intention, that no Allegiance should be paid to K. J. for to No King, No Allegiance is due: By the second, That all our Allegiance should be paid to W. and M. for there being no other Sovereign according to this Declaration, it must be all due unto them alone. And the new Oath being then immediately added, is it not rational to interpret it in Congruity to those Declarations; which do manifestly discover it to be the Intention of the Imposers, that all our Allegiance should be paid to the present Princes, without any reservation of the same Duty to K. J.; who according to

that Instrument has no more Right, than the *Cham of Tartary* to it. And I presume it will not be denied, That the Intention of the Oath is the same in the Law, as it was in the Declaration.

Eut to this it is replied, That though it be true, that in the Judgment of the Imposers, all our Allegiance is due to K. W. and none at all to K. J.: yet if it be consider'd, that when the Form of the Oath was under Debate, the word *Rightful* was struck out, upon exception made, that many scrupulous Persons would thereupon refuse to take it; and so the Form was passed without it. This may be well taken for a sufficient Indication, that it was the Intention of the Imposers, that we should swear Allegiance to the K. and Q. only as such *de facto*; and consequently, that they did not intend to oblige us to such a high degree of Allegiance as is due to a K. *de jure*: and therefore that it is not necessary to take the Oath in the highest Construction of it.

This seems to be the most considerable reason, that is urged for the abatement of the old sense of Allegiance; and I hope to give a satisfactory Answer to it. And I Answer,

1. That though the deliberate omission of the word *Rightful* does necessarily infer, that we are not obliged in this Oath to a Recognition of the right to the Crown: yet it does not infer, that we are not obliged to pay as high a degree of Allegiance, as to any Rightful King whatsoever. That omission is an argument, that the word *King* in the Oath does not necessarily signify a King *de jure*: but it is no argument, that true Allegiance does not signify true Allegiance, that is, an Obligation to adhere to the King against all his Enemies. For there was no Debate, that we know of, about the Sense of the word *Allegiance*; neither



neither is there any Intimation given, that they design'd to restrain it to a lower signification, though it was plainly necessary to do it, if they intended to alter the commonly received meaning of it. Wherefore as the striking out the word *Rightful* would not have proved, that they did not intend to oblige us to an active assistance of K. W. against all Men living; if those words had been expressly inserted in the Oath: so neither will it prove, that the same Duty is not now required of us, if the word *Allegiance* do, as I have proved, *vi termini* import it; and that as fully, as if it had been in express words required in it.

2. That an abatement of Allegiance is not necessarily inferr'd in that omission does appear from hence; because it might be the Judgment of the Imposers, that a plenary, and unreserved Allegiance was due by the Laws of this Kingdom even to a K. *de facto*; as much as if he were K. *de jure* also: and if that were their opinion; then we have a rational, and easy account of that Omission, *viz.* that since the highest Allegiance was thought due to a King *de facto*, it was not necessary to create scruples by insisting on the word *Rightful*, since the work of the Law might be as effectually done without it, and the present Governors secured by obliging the Subjects to swear Allegiance to them. And that this was probably the true reason of that Omission must needs be granted, if it be consider'd how that opinion is become almost universal, and has been publicly countenanced, and asserted not only in so many Licens'd Pamphlets, but by our Lawyers and Judges, and even by our Law-givers themselves. However it clearly shews, that the Omission of the word *Rightful* does not manifestly prove their Intention to oblige us to a lower degree of

Allegiance: And the rule of the Law is here to be applied, that we must not recede from the Customary signification of the words of the Oath, when there is no manifest Necessity for it.

Further, If it be objected, That many Members of both Houses of Parliament have declared, that the Oath was intended only to oblige us to live peaceably under the Government; I answer, That those words seem more ambiguous, than the words of the Oath; that the utmost extent of them may reach to a full and unreserved Allegiance; that probably there are not many that will say, that they did not intend to debar us from paying any Allegiance to K. J. and if they should, there are more who will declare the contrary; and that lastly, the Declaration of those Members is no authentical Interpretation; for when the Assembly of Parliament is ended, they are not to be consider'd, as Law-givers, but as private Persons; and they have no more Authority to interpret Statutes, than they have to make them.

And lastly, If it be yet further objected, That the Government not opposing the Declarations, which have been publicly made by many, [ *That they took the Oath in no other Sense, but that of a peaceable Submission,* ] does imply a tacit approbation of it. The answer is obvious: That the not opposing those Declarations does not amount to the approving of them, as the Sense of the Imposers; but only to a connivence at them for some Politick end, and design: And in short, no Man will say, That not opposing is approving; or, that the Government does always allow of that, which it does not punish.

And thus have I somewhat more largely, than at first I intended, explained the Nature of Allegiance, and asserted the highest Construction of the Oath to be the genuine meaning of it. And, I hope, it will be allowed, that this discourse has sufficiently evinced, if not the certainty of that Construction, yet at least the uncertainty of the other Interpretations of it.

And then if any one, after all that has been here offered, shall remain doubtful about the true Sense of the Oath; I shall only put him in mind of that necessary Caution of Dr. Sanderſon, [“That when the meaning of an Oath is dubious, great care must be used, that we do not indulge our corrupt Affections too much; or assume to our selves a loose and licentious way of interpreting, that we may the more easily evade the Obligation of the Oath; and that we do not for our proper Interest, and advantage, affix any other sense upon the Oath, or any part of it, than that, which any other pious and prudent person (who, being unconcerned in the Business, is of a freer Judgment,) would easily gather out of the words themselves: and that for two Reasons. First, For fear of giving scandal to others, lest any other weaker Person, being encouraged by our example, should think the same thing lawful for him, which he sees practised by us; though he be ignorant of those Subtilties, by which alone we discharge our selves from Perjury. And Secondly, In respect of our selves, viz.

De Jur. ob-  
Præf. 2.  
S. 2.

Dr. Sanderſon, ib. “of which abominable Crime, we do  
Quod gravissimum Crimen sine dubio in nos admittimus, si nos forte fallat benignior Interpretatio, qua nobis jurandi fecit audaciam.

“undoubtedly bring upon our Souls,  
“if that more favourable Interpretation, which emboldned us to take the Oath, should chance to deceive us. And this Reason is grounded upon that general Rule; which requires us in things doubtful to chuse the safer side. But it is much safer to refuse the Oath propounded, when the Words according to the common, and obvious sense, do seem to contain any thing unlawful in it self; than by a loose Interpretation so to mollifie them to our purpose, as that we may the more safely take it. Forasmuch as it is manifest, that such an Oath may be refused, but not that it may be taken without any ei her fear, or danger of Perjury.] Thus that excellent Ca-  
suisit.

And in another place, where he expressly propounds the Case of an ambiguous Oath, his Resolution is, [“That a pious and prudent Person should absolutely refuse it; \* and \*Id. Præf. 6. “that before an Oath can be rightly S. 10. Sa- “taken, it is expedient, that there nē ut inter “be a clear Agreement amongst all jurandum “Parties concerned, (the Imposers, omnia recte “and the Takers) about the meaning fiant, exped- “of it.] dit ut de  
verborum

sensu inter omnes Partes quarum interest liquido constet; id quod liquido jurare veteribus dictum est.—  
Et ex veteri formula juraturo à deferente juramentum dici solitum est; Quâ de re peto liquido Jur-  
ros.

Whether this be not honest, and conscientious Divinity, I leave every man to judge; and whether they, who have taken the Oath in the lower interpretation, have acted according to these or better measures, they themselves are the only Judges. If they have herein acted with sincerity, and their  
own

own hearts do not condemn them ; that they, who swear deceitfully ; or  
then they may have confidence to- change, when they have sworn to their  
wards God ; but we should all remem- own hurt, shall never, unless they re-  
ber, that God is greater than our pent, abide in the Tabernacle of the  
hearts, and knoweth all things ; and Lord, nor ascend into his Holy Place.

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*F I N I S.*

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